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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 823

PAN AMERICAN PETROLEUM CORPORATION, *Petitioner,*

vs.

KANSAS-NEBRASKA NATURAL GAS COMPANY, INC., *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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No.

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vs.

KANSAS-NEBRASKA NATURAL GAS COMPANY, INC., *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit entered in the above entitled case on January 12, 1962.

OPINIONS BELOW

The opinion of the United States District Court for the District of Nebraska is not reported. A transcript of the opinion is at R. 78-98, the findings of fact at R. 98-110, and the conclusions of law at R. 110-118. The opinion of the United States Court of Appeals for the Eighth Circuit (Appendix, *infra*, pp. 1a-18a) is reported at 297 F. 2d 561 (1962).

JURISDICTION

The judgment of the Court of Appeals was made and entered on January 12, 1962. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1). Federal Jurisdiction in the court of first instance is based upon the diversity of citizenship of the parties.

QUESTIONS PRESENTED

Pursuant to Section 4 of the Natural Gas Act, rate schedules covering the sale of natural gas by Petitioner to Respondent were accepted for filing by the Federal Power Commission. Respondent did not protest or seek judicial review of such Commission actions. Years later, Respondent sued for alleged overpayments, claiming that lower contract prices applied. Petitioner as its defense contended that the higher rates filed, accepted, and made effective by the Commission by final action under Section 4 of the Act are the only legal rates and supersede any lower contract prices. The courts below concluded that such Commission actions do not establish a legal rate binding upon purchasers and sellers or upon a court in collateral litigation, and Respondent recovered judgment. The questions are:

> Where, pursuant to Sections 4(c) and 4(d) of the Natural Gas Act, the Federal Power Commission formally accepts rate schedules and changes of rates for filing and makes the rates provided therein effective:
>
> 1. Does the Commission thereby establish the effective, legal rate binding upon the purchaser, seller, and a court in collateral litigation?
>
> 2. If such Commission acts are not set aside by timely judicial review under Section 19 of the Act, do such acts establish the legal rate even if a

purchaser, in subsequent collateral litigation, asserts the rate accepted for filing is a unilateral rate?

STATUTES INVOLVED

The statutory provisions involved are Sections 4, 5, 16, 19, and 22 of the Natural Gas Act, 52 Stat. 822, 823, 831, and 833 (1938), 15 U.S.C. 717c, 717d, 717r, and 717u. (Appendix, *infra*, pp. 18a-25a.) Sections 154.91 through 154.94 of the Federal Power Commission's Regulations under the Natural Gas Act (18 C.F.R. 154.91-154.94) are also involved. (R. 40 *et seq.*)

STATEMENT

This case involves a basic question unresolved by this Court: What is the legal effect of the acts of the Federal Power Commission accepting rate schedules and changes of rates for filing under Sections 4(*c*) and (d) of the Natural Gas Act?[1] Interdependent issues arose as to whether such acts under the federal statute (a) provide a defense against subsequent claims for overpayments resting upon an alleged contract deriving force from state law; and (b) can be treated as void in collateral litigation between private parties, years later, if the rate accepted for filing was "unilateral".

Prior to December 2, 1953, Petitioner, (Pan American[2]) entered into three contracts for the sale of

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[1] The question was referred to, but not decided in *Pan American Petroleum Corporation* v. *Superior Court of the State of Delaware*, 366 U.S. 656 (1961). This Court said (p. 664): ". . . we are not called upon to decide the extent to which the Natural Gas Act reinforces or abrogates the private [unfiled refund] contract rights here in controversy."

[2] On February 1, 1957, the name of Petitioner was changed from Stanolind Oil and Gas Company to Pan American Petroleum Corporation.

natural gas to Respondent (Kansas-Nebraska) (R. 19) at prices less than 11¢ per Mcf (R. 49). On December 2, 1953, the Kansas Corporation Commission issued its order prescribing a minimum price of 11¢ per Mcf for gas withdrawn from the Kansas Hugoton Gas Field (R. 36), the source of the gas sold by Pan American to Kansas-Nebraska (R. 19).

On June 7, 1954, in *Phillips Petroleum Co.* v. *Wisconsin, et al.*, 347 U.S. 672, this Court upheld Commission jurisdiction over the rates involved. Thereafter, in *Cities Service Gas Co.* v. *State Corporation Commission of Kansas, et al.*, 355 U.S. 391 (1958), this Court held that the Commission jurisdiction to establish and modify these rates is exclusive.

On July 16, 1954, the Commission by Order No. 174 (18 C.F.R. § 154.91 *et seq.*) amended its Regulations under the Act, requiring Petitioner to file rate schedules with the Commission and thus to notify the public and the Commission of the June 7, 1954, rate for each of its sales, and also to provide for exercise by the Commission of its regulatory authority under the Act. Thereafter, Petitioner tendered its rate schedules to the Commission for filing pursuant to Section 4(e) of the Act. Each rate schedule involved in this case included a copy of the original contract with Kansas-Nebraska and a copy of the order of the State Corporation Commission of Kansas prescribing an 11¢ minimum price for the gas. Petitioner also tendered copies of invoices covering gas sold to Respondent on June 7, 1954, at a price 11¢ per Mcf (R. 45-48). Simultaneously, Petitioner advised Respondent in writing of the contents of the rate schedules which it was tendering to the Commission (R. 51).

These rate schedules were accepted for filing by the Commission at a regular meeting by formal vote, and its minutes show the rate of 11¢ per Mcf as the effective rate on June 7, 1954. (R. 53.) The Commission duly gave public notice of its decisions to accept such rate schedules by issuing letter orders (R. 54), by placing such letter orders in the Commission's public files, and by stamping the copies of the documents contained in the Commission's public rate schedules "Accepted", with numerical designation of each as one of Petitioner's rate schedules, and supplements thereto (R. 54). All of these Commission actions were taken in 1954 and 1955. Respondent was notified by Petitioner of Commission action on the rate schedules (R. 29).

Subsequently in 1957, Petitioner filed with the Commission under Section 4(d) of the Act and Section 154.94 of the Commission's Regulations (R. 41-42), a notice of a change of rate under each rate schedule, changing the rate from 11¢ to 11.055¢ (R. 61-64). Petitioner notified Respondent of such filings (R. 32). The Commission, in formal meeting, ordered that such changes of rates should become effective on July 1, 1957 (R. 70). Public notice of the Commission's decision to make such changes effective was duly given by placing letter orders (R. 68) in the Commission's public files and stamping the rate schedule supplements placed in Petitioner's public rate schedule files with the notation of July 1, 1957, as the "effective date" (R. 68-71.) In addition, Respondent was notified by Petitioner of the Commission's actions (R. 32).

Respondent did not at any time protest or otherwise complain of the filings made by Petitioner in 1954 and 1957. Respondent did not, under Section 19 of the Act, institute review of the regulatory actions and

decisions made by the Commission under Sections 4(c) and (d) of the Act.

On January 20, 1958, this Court in *Cities Service Gas Co.* v. *State Corporation Commission of Kansas, et al.*, 355 U.S. 391 (1958), held the Kansas 11¢ order invalid as an invasion of the jurisdiction of the Federal Power Commission. Thereafter Respondent brought this action on the theory that a letter dated February 18, 1954, which Respondent had earlier written to Petitioner, and notations upon Respondent's check vouchers constituted a contract to repay the difference between the amount paid under the filed rates and the amounts which would have been paid under the contract prices. Neither this February 18, 1954, letter nor the check vouchers have been accepted as a part of Petitioner's rate schedules or otherwise have been the subject of Commission regulatory action with respect to Petitioner's rates.

The case was tried on the pleadings and a written stipulation of facts setting forth in detail the Commission's regulatory actions under Sections 4(c) and 4(d) of the Act with respect to Petitioner's rate schedule and change of rate filings. (R. 18-78)

Respondent argued that Petitioner's rate schedule and change of rate filings were "unilateral" within the meaning of *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332 (1956), and that the regulatory action of the Commission under Sections 4(c) and (d) of the Act did not have the effect of establishing a rate that differs from the prices that were found to be in the contracts.

Petitioner contended that under the holding of *Montana-Dakota Utilities Co.* v. *Northwestern Public Service Co.*, 341 U.S. 246 (1951), and the rule of the *Mobile*

case, the Commission, by the final regulatory action taken by it under Sections 4(e) and 4(d) of the Act, had established the 11¢ and 11.055¢ rates as the only legally effective rates. Petitioner further contended that if the January 20, 1958, decision invalidating the 11¢ Kansas order in any way rendered Petitioner's earlier filings "unilateral", a court is bound by the Commission's outstanding regulatory actions and may not enter a common law judgment authorizing the sales on different terms.

The District Court held that the prices prescribed in the contracts, unaffected by the Commission's actions accepting and making effective the 11¢ and 11.055¢ rates, were at all times the legally effective rates (Conclusions 12, 16; R. 113-115) and rendered judgment against Petitioner for the refunds claimed to be due under the February 18, 1954, letter. The Court of Appeals affirmed (297 F. 2d 561; Appendix, *infra*, pp. 1a-18a) on the theory that the actions taken by the Commission under Sections 4(e) and 4(d) of the Act were of no legal effect because there had been no formal determination of reasonableness of the rates, after hearing, under Section 4(e) or 5(a) of the Act.

REASONS FOR GRANTING THE WRIT

1. The Court of Appeals Has Decided a Question of General Applicability to Commission Rate Regulation Under the Natural Gas Act and Which Has Not Been Decided by This Court.

Uncertainty today as to legal effect of Commission rate regulatory actions in this case—and in other pending cases[3] not involving state pricing orders—primarily

[3] E.g., *Socony Mobil Oil Co.* v. *Brooklyn Union Gas Co., et al.*, 5th Cir., No. 18941, decided February 14, 1962; *Hunt Oil Co.* v. *Federal Power Commission*, 5th Cir., No. 19,218, pending; *Shell Oil Co.* v. *Federal Power Commission*, 3rd Cir., No. 13,800, pending.

involves two decisions: that in *Montana-Dakota Utilities Co.* v. *Northwestern Public Service Co.*, 341 U.S. 246 (1951), and that in *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332 (1956).

Under the Natural Gas Act, effective rates are either (1) rates "accepted" for filing without suspension by Commission actions under Sections 4(e) and (d) (as here); or (2) rates suspended under Section 4(e), or thereafter "approved" as "just and reasonable" under that subsection; or (3) rates approved as reasonable after hearing under Section 5(a). Rates in the first category—"accepted" for filing—are, as a result of Commission action, the rates being charged today by gas producers in thousands of sales to interstate transmission pipelines.[4] This case thus involves the question of just what is the legal basis for all rates currently in effect by Commission action such as shown by the record here.

In *Montana-Dakota, supra,* this Court stated that by "accepting" rate schedules for filing under Section 205(e) of the Federal Power Act, 16 U.S.C. 824d(e), the Commission establishes the legally effective rate under that statute, and that the courts cannot authorize sales on other terms even if a court finds that documents in a rate schedule accepted by the Commission are void under state law. Although this Court divided on one issue in the case, there was no disagreement on

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[4] During fiscal year 1961 alone, of 1,532 rate increases filed with the Commission, 627 were accepted for filing under Section 4(d), without suspension. See Forty-first Annual Report of the Federal Power Commission to Congress (January 10, 1962), pp. 78-79. In the United States Government Proposed Executive Budget for Fiscal 1963, it is reported that as of January, 1961, natural gas was being sold under more than 12,000 independent producer rate schedules.

the point involved here. The majority opinion stated (p. 251):

> ". . . It [the buyer] can claim no rate as a legal right that is other than the filed rate, whether fixed or merely accepted by the Commission, and not even a court can authorize commerce in the commodity on other terms."

To the same effect is this statement in the dissenting opinion (P. 256):

> "Unless they are challenged, either by an interested party or on the Commission's initiative, the filed rates become the legal rates."

The Court further stated that persons of the opinion that the Commission erred in accepting rate schedules and establishing rates, should first bring their complaints before the Commission in the manner prescribed by the Federal Power Act.

Thereafter, in *Mobile*, the Court held that the Natural Gas Act does not abrogate the right of purchasers and sellers of gas to initially fix by contract the rates for sales of gas, and that Commission action accepting a "unilateral" rate for filing under Section 4(d) is reversible error. On the same day, in *Federal Power Commission* v. *Sierra Pacific Power Co.*, 350 U.S. 348 (1956), the Court held that the rule of the *Mobile* case also applies under Section 205(d) of the Federal Power Act.[5]

Both *Mobile* and *Sierra* had reached this Court through timely statutory review of Commission action.

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[5] Sections 205(c), 205(d), and 205(e) of the Federal Power Act are similar and comparable to Sections 4(c), 4(d), and 4(e) of the Natural Gas Act.

Montana-Dakota, like this case, arose from collateral litigation. There is now considerable uncertainty as to whether the *Mobile* and *Sierra* cases modified what is termed the "filed rate doctrine" of *Montana-Dakota*, or whether, after *Mobile*, that doctrine has any applicability at all under the Natural Gas Act. Such questions have arisen not only in collateral litigation as here, but also in direct review proceedings involving rates that now could be termed "unilateral" under *Mobile*, but which were never reviewed or set aside in the manner prescribed by Section 19(a) and (b) of the Natural Gas Act.[6]

In the instant case, Respondent contended that because of the *Mobile* decision, the rule of *Montana-Dakota* does not describe the legal effect of Commission "acceptance" of gas rate schedules, and that *Montana-Dakota* does not apply to common law actions respecting payment for gas sold under rate schedules with respect to which the Commission has not issued orders under Section 4(e) or 5(a) of the Act fixing a "just and reasonable" rate.

Petitioner argued that the rule of *Montana-Dakota* applies with full force to the effect that must be accorded Commission regulatory action under Sections 4(c) and 4(d); that *Mobile* is not in conflict with

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[6] *E.g.*, see *Portsmouth Gas Co.* v. *Federal Power Commission*, 247 F. 2d 90 (D.C. Cir. 1957); *Tyler Gas Service Co.* v. *Federal Power Commission*, 247 F. 2d 590, 593 (D.C. Cir. 1957). Similar uncertainty exists about the "filed rate doctrine" under the Motor Carrier Act. In *T.I.M.E., Inc.* v. *United States*, 359 U.S. 464 (1959), the *Montana-Dakota* doctrine was cited as applicable to rate regulation under that Act, but compare *Hewitt-Robins, Inc.* v. *Eastern Freight-Ways, Inc.*, 293 F. 2d 205 (2d Cir. 1961), and Petition for Writ of Certiorari granted January 8, 1962, in No. 491, October Term, 1961.

Montana-Dakota, in that *Mobile* was a Section 19 review of Commission action; and that under *Montana-Dakota*, the District Court was without jurisdiction to enter judgment at common law retroactively prescribing the terms for the sale of gas that differ from the filed rates under rate schedules which have been accepted by the Commission.

Section 4(c) requires, *inter alia*, that:

> "... every natural gas company shall file ... schedules showing all rates and charges."

Section 4(d) relating to a change in rate schedule requires, *inter alia*, that:

> "... no change shall be made ... in any such rate ... or contract relating thereto, except after thirty days' notice to the Commission and to the Public. Such notice shall be given by filing with the Commission ... new schedules stating plainly the change or changes to be made ..."

The court below found these sections were complied with as to Petitioner's original Section 4(c) filing, stating:

> "... the FPC advised appellant that its rate filings 'have been accepted for filing' ..."
>
> (Appendix, *infra*, p. 4a)

As to Petitioner's change of rate filing under Section 4(d), the court states:

> "By letter dated August 19, 1957, the FPC notified the former (Pan American) of the acceptance of such new rate for filing."
>
> (Appendix, *infra*, p. 5a)

Having found that both Sections 4(c) and 4(d) as to original filing and as to change of rate had been fully complied with, the Eighth Circuit then holds that, because there had been no hearing under Section 4(e) to fix the "reasonableness" of the rate, Petitioner's rate filings and Commission action of "acceptance" under Sections 4(c) and 4(d) are without legal effect and that an alleged unfiled collateral contract controls. The Court thus states:

> "Inasmuch as there has been no hearing before the FPC to determine the lawfulness of the rates specified in the contracts between the parties, and no orders have been made by the FPC approving, rejecting or in any way affecting such rates, the 'integrity' of *the private arrangement between the parties*, as referred to by the Supreme Court in *Memphis, supra, remains unaffected.*" (Emphasis supplied).
>
> (Appendix, *infra*, p. 17a)

Contrary to *Montana-Dakota*, the court held that the rate "merely accepted by the Commission" fixes no "legal right," and then proceeded to "authorize commerce in the commodity on other terms." Cf. *Montana-Dakota Utilities Co.* v. *Northwestern Public Service Co.*, 341 U.S. 246, 251 (1951).

If the *Montana-Dakota* rule applies to Commission regulatory actions under Sections 4(c) and 4(d), as well as under Sections 4(e) and 5(a), the common law judgment affirmed by the Court of Appeals is invalid.

The effect of the decision below is obvious. Vast amounts of gas are purchased and sold each day under gas rate schedules and changes of rates with respect to which no orders under Section 4(e) or 5(a) of the Act fixing "reasonable" rates have yet been issued.[7]

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[7] *Supra*, footnote 4, p. 8.

The legally effective rate under such rate schedules is uncertain. The Eighth Circuit's conclusion is that any court having jurisdiction of a common law action between the parties may enforce an unfiled contract which effects a retroactive change in the rate made effective by the Commission. This means that the authority under which sellers have been and are receiving payment for this gas flows solely from private contracts arising out of right under state law, and not from Commission regulatory action arising out of the exercise of authority under the Natural Gas Act.

Petitioner interprets *Pan American Petroleum Corp.* v. *Superior Court of the State of Delaware*, 366 U.S. 656 (1961), to mean that this Court has not decided the substantial question of whether, in the light of *Mobile*, the rule of *Montana-Dakota* applies to Commission actions under Section 4(e) or 4(d) of the Natural Gas Act. Petitioner respectfully submits that the instant case brings this question clearly before the Court, and that as long as uncertainties exist with respect to the legal effect of Commission regulatory actions under Sections 4(e) and 4(d), not only are private parties wholly uncertain as to their rights, and source of those rights, but the Commission also is hampered in its efforts to bring independent producer rates effectively under the regulatory scheme provided for in the Act.

2. The Eighth Circuit's Construction of the Effect of Commission Acts Is in Conflict With Constructions of Other Circuits.

The Courts of Appeals for the Tenth and Third Circuits have construed Commission Acts of acceptance for filing under Sections 4(e) and (d) as establishing the legal rate binding on buyer and seller, unless and

until set aside on timely review under Section 19. In contrast, the Eighth Circuit holds such acts to be of no legal effect, and of no consequence in collateral litigation.

In *Cities Service Gas Co.* v. *Federal Power Commission*, 255 F. 2d 860 (1958), *cert. den., sub. nom., Magnolia Petroleum Co.* v. *Cities Service Gas Co.*, 358 U.S. 387, the Tenth Circuit passed upon legal effect and finality to determine necessity for review of such Commission actions. That court held (255 F. 2d at 863):

> "An order of an administrative body is reviewable when action taken in advance of hearings or adjudications result in the setting of legal consequences . . . To assert that petitioner's (the purchaser's) aggrievement lay with the invalid Kansas Corporation Commission order and not with the Power Commission's *acceptance* of Schedule 26 is but to play with words." (Emphasis supplied)

The court concluded that acceptance of an 11 cent rate schedule for filing was binding on the purchaser, and that, unless set aside under Section 19, the Commission acts would be conclusive in collateral litigation (255 F. 2d at 863-864).

Similarly, the Third Circuit held such Commission acceptance for filing is final action, conclusive as to rate unless set aside on review. (See *Natural Gas Pipeline Co. of America* v. *Federal Power Commission*, 253 F. 2d 3 (3rd Cir. 1958), *cert. den. sub nom. Dorchester Corp.* v. *Natural Gas Pipeline Co.*, 357 U.S. 927, and particularly the court's discussion of the third and last order there involved, dated January 27, 1956, at 253 F. 2d at 9). The same court, citing *Montana-Dakota*, has also held that as long as Commission ac-

tion of "acceptance" of a rate schedule for filing is outstanding; even if issued in conjunction with temporary authorization of a sale, the rate thereby accepted for filing is the only legal rate. See *Signal Oil and Gas Co.* v. *Federal Power Commission*, 238 F. 2d 771, 773, fn. 1 (3rd Cir. 1956).

The Eighth Circuit is also in conflict, at least in reasoning, with the Court of Appeals for the District of Columbia and Fifth Circuits. The latter courts, considering both *Mobile* and Sections 4(e) and (d) have held that the specific rate made effective by the Commission's initial acceptance for filing under Section 4(e) cannot be changed to another rate, *even if* provided for by a *contract*, unless and until the seller tenders and the Commission accepts for filing a change of rate under Section 4(d). See *Episcopal Theological Seminary, et al.* v. *Federal Power Commission*, 269 F. 2d 228 (D.C. Cir. 1959), *cert. den. sub nom., Pan American Petroleum Corp.* v. *Federal Power Commission*, 361 U.S. 895 (1959), and *Bel Oil Corp.* v. *Federal Power Commission*, 255 F. 2d 548 (5th Cir. 1958), *cert. den.*, 358 U.S. 804 (1958).[8] In contrast, the Eighth Circuit's construction of Commission action and Section 4(e) and (d) would mean that regardless of Commission action, contract prices control, moving up or down, retroactively and prospectively, solely on the basis of private agreements, filed or unfiled, between buyer and seller.

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[8] See also *Texaco, Inc.* v. *Federal Power Commission*, 290 F. 2d 149 (5th Cir. 1961), wherein the Fifth Circuit held that Commission action conditioning and initial rate at time of acceptance for filing and of issuance of temporary authorization, is a binding order as to rate, immediately reviewable under Section 19(b) (290 F. 2d at 152, 156-157).

Another aspect of this conflict in reasoning is illustrated by reference to this Court's opinion in *Atlantic Refining Co. et al.* v. *Public Service Comm'n., et al.*, 360 U.S. 378 (1959). There, this Court held that the Commission should condition initial rates tendered under Section 4, at the time of issuance of a certificate under Section 7, to protect the public interest *pending* determination of a "reasonable" rate under Section 4(e) or 5(a). This Court, as have lower courts other than the Eighth Circuit,[9] thus recognized that without such action at the time of filing, the initial rate filed under Section 4(e) would be the binding, legal rate, and so continue to be until after completion of such hearings under Sections 4(e) and 5(a). However, under the Eighth Circuit's interpretation, neither an initial rate accepted for filing under Section 4(e), *nor* the "conditioned" rate accepted under Section 4(d) *after* application of the *Atlantic (Catco)* principle, would be binding in collateral contract actions. Under the Eighth Circuit's holdings, either of these "accepted" rates could be ignored, and an original contract price would still control.

The Eighth Circuit has also erred by construing Commission orders to mean that the formal act of "acceptance" under Sections 4(e) or 4(d) has no legal significance.[10] If that were true, the Commission need

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[9] See, *e.g.*, *Texaco, Inc.* v. *Federal Power Commission*, 290 F. 2d 149 (5th Cir. 1961); *Public Service Commission of New York* v. *Federal Power Commission*, 287 F. 2d 146 (D.C. Cir. 1961).

[10] The Commission's letter orders of "acceptance" obviously have very specific meaning under the Act (R. 54). The Commission: *first* gives notice of "acceptance" for filing, *i.e.*, the rate is now on file under Sections 4(e) or (d) as an effective, legal rate; *second*, orders that *no* rate change may be made except through Section 4(d); *third*, advises that acceptance of a rate under

not pass on tenders under Section 4(c) or 4(d), as it does; issue letter orders, as it has since 1954, or give notice to the filing party and the public that, after its formal review, it has decided to "accept" a tender for filing. The Eighth Circuit thus treats the Commission as a mere depository of papers, with the legal rate to be determined only in collateral litigation between private parties.

Obviously, constructions by the Tenth and Third Circuits are correct, and the Eighth Circuit's holding is incompatible with an orderly administration of the Act, which provides a comprehensive, exclusive interrelation of Sections 4(c), (d), (e), and Section 5. Whether a dispute between private parties arises in the aftermath of a state order, as here, or from any other conflicting claims as to rights or prices under a contract, the Eighth Circuit cannot be correct in eliminating Commission jurisdiction under Sections 4(c) and (d) and in treating Commission acts thereunder as having no legal effect.

Under the doctrine of the *Montana-Dakota* case, the Federal Power Act provides comprehensive, effective rate regulation without collateral interference. If that

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Section 4 does not "waive" the separate requirements for a certificate under Section 7; *fourth*, advises "acceptance" is not "approval", *i.e.*, this effective, legal rate has yet to be determined "just and reasonable" under Sections 4(e) or 5(a); *fifth*, advises "acceptance" is not a recognition of any "claimed contractual right or obligation associated therewith", *i.e.*, the act of "acceptance" cannot be claimed as a "contract" running between filing party and the regulatory body, and the rate remains subject to statutory prohibitions upon changes, etc., regardless of contract claims; *sixth*, states "acceptance" is "without prejudice" to future orders, *i.e.*, as to "reasonableness" under Sections 4(e) and 5(a) or "public convenience and necessity" under Section 7.

doctrine similarly applies under the Natural Gas Act, natural gas rates are also subject to exclusive, effective control by the Commission; but if the court below is correct, the filed rate doctrine does not apply, and the Commission always shares its control of the rates under Sections 4(c) and (d) with courts of original jurisdiction.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

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